

UNITED STATES PATENT AND TRADEMARK OFFICE

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PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte JUNICHI SATO

Application No. 09/161,520

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on December 10, 2002. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On November 26, 2002, appellant filed a Reply Brief (Paper No. 30) in response to the Examiner's Answer mailed September 26, 2002 (Paper No. 28). According to MPEP § 1208.02:

[A]ppellant may file a reply brief as a matter of right within 2 months from the mailing date of the examiner's answer or supplemental examiner's answer. . . . The primary [examiner] must then either: (A) acknowledge receipt and entry of the reply brief by using form paragraph 12.47 on form PTOL-90; or (B) reopen prosecution to respond to the reply brief. See MPEP § 1208.02. A supple-mental examiner's answer is not

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permitted unless the application has been remanded by the Board for such purpose [emphasis added].

. . . .

While 37 CFR § 1.193(b)(1) prohibits a supplemental examiner's answer (in the absence of a remand from the Board of Patent Appeals and Interferences for such purpose), an examiner may (with supervisory patent examiner approval) respond to a reply brief by reopening prosecution.

A review of the application reveals that the examiner has not responded to appellants' Reply Brief filed on November 26, 2002 (Paper No. 30).

Accordingly, it is

ORDERED that the application is remanded to the examiner for proper response to appellants Reply Brief, or to reopen prosecution, and for such further action as may be appropriate.

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